

Ms. Sandra Braunstein
Director
Division of Consumer and Community Affairs
Federal Reserve Board
1709 New York Avenue, NW
Washington, DC 20006

RE: "To protect the overall Public Trust"

Dear Director Ms. Sandra Braunstein,

The AFI, Appraisers for Independence, is a nationwide network of State Certified and Licensed Residential & Commercial Appraisers. Our membership includes Appraisal Institute, ACLU, Appraisal Guild, State & Local Appraisal Organization Members, and Independent Appraisers all of whom share a Common Credo stated in the USPAP Preamble i.e. *"The appraiser's responsibility is to protect the overall public trust" while maintaining Ethical Objectivity and Independence*".

For more information about our network please contact the Assistant Director of the U.S. Government Accountability Office, The Chairman of the Subcommittee on Capital Markets, Insurance, and Government, and The Staff Director, Capital Markets Subcommittee at U.S. House of Representatives to get an unbiased representation of the AFI. In short our intention is to enlist your personal assistance in our mutual effort to regain and preserve Appraiser Independence while protecting the Public Trust.

I am sure you are aware of published efforts by certain Organizations with direct interest in maintaining their dominance on the Mortgage Industry and Consumer Wallets. Their communications include language which advocates the obstruction and delay of the implementation of Title XIV. Further, they contain a distorted interpretation of the language in the Dodd-Frank bill which misrepresents the facts. It is our opinion that delaying Implementation of FINREG, as written, will continue to do great harm to Consumers and Ethical Appraisers.

There have been quotes of "Customary & Reasonable" language which includes combining both AMC processing and Independent Appraiser Fees. That practice has been illegal and remains so under Title XIV. Illustration of this essential issue can be found below:

The newest FHA Mortgagee Letter clearly, and correctly, states:

ML 2009-28 (MORTGAGEE LETTER 2009-28)

"The fee for the actual completion of an FHA appraisal may not include a fee for management of the appraisal process or any activity other than the performance of the appraisal."

ML 1997-22 (MORTGAGEE LETTER 97-22)

"FHA field offices will no longer establish maximum appraisal fees. However, a lender's charge to the borrower for an appraisal must be no more than the actual amount charged by and paid to the appraiser, subject to the fee being reasonable and customary for an appraisal in the area in which the property is located."

Fee splitting, as a stand alone entity, has been illegal under RESPA for decades under Section 12 U.S.C. 2607(a) and Section 8(b). Furthermore Section 12 U.S.C. 2607(c)(2). RESPA also requires the disclosure of settlement costs to consumers at the time of or soon after a borrower applies for a loan and again at the time of real estate settlement.

RESPA Prohibited Fees

"It is illegal under RESPA for anyone to pay or receive a fee, kickback or anything of value because they agree to refer settlement service business to a particular person or organization. For example, your mortgage lender may not pay your real estate broker \$250 for referring you to the lender. It is also illegal for anyone to accept a fee or part of a fee for services if that person has not actually performed settlement services for the fee. For example, a lender may not add to a third party's fee, such as an appraisal fee, and keep the difference."

Penalties

"It is a crime for someone to pay or receive an illegal referral fee. The penalty can be a fine, imprisonment or both. You may be entitled to recover three times the amount of the charge for any settlement service by bringing a private lawsuit. If you are successful, the court may also award you court costs and your attorney's fees."

**Title XIV - "Dodd-Frank" H.R. 4173
Customary & Reasonable Fee**

4173 – 814

"(i) CUSTOMARY AND REASONABLE FEE.—

"(1) IN GENERAL.—Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by known appraisal management companies."

Any opposition to this and or the persistence to obstruct, delay, remove or distort interpretation of is a direct violation of Appraiser Independence. The language in the new Law, the existing RESPA, and previous HUD Mortgage Letters clearly recognize and isolate this on-going problem. Due to lack of Enforcement of existing Law and Regulations – Violations have been permitted to continue on a daily basis. We are sure you will agree enforcement of Title XIV IS essential and timely.

What is Customary & Reasonable?

Is it the Fee currently being charged to consumers?

Of course it is, otherwise Banks, Lenders and/or their Subsidiary, Owned or Contracted Agent AMC's have been over-charging Consumers for more than 10 years. Title XIV provides that the designated "Appraisal Fee" paid by the Consumer must be the Fee paid to the Appraiser who actually performed an appraisal. Clearly this is a simple, and wholly adequate, definition of "Customary or Reasonable".

Is it the Independent Fee Study performed by the Mercury Network?

It could be. This study was completed under the premise of ALL Appraisal fees paid to Appraisers prior to the HVCC & typically not involving AMC orders. This IS perhaps the most comprehensive, accurate, current and Independent Study.

The applicable premise underlying "Customary and Reasonable" is simple:

1. Consumers are NOT TO BE overcharged for services. Mortgage Providers which permit overcharging, either directly or via Third Party Agents, violate Federal Laws.
2. Appraisers, as clearly defined in Title XI FIRREA, RESPA, and now Title XIV are to be compensated in full for the work they perform. NO FEE SPLITTING

The GAO has begun the Studies outlined in their Scope of Work defined in Title XIV. A preliminary understanding of their study and efforts during our meeting demonstrated how crucial it is for Lenders, their Agents, and Appraisers to comply with the new Law and how essential Federal Enforcement efforts in this regard will be.

Attempts to delay, derail, misrepresent or remove the provisions in the bill should be met with the utmost scrutiny and recognize the economic advantages of those attempting to profit from it.

We ask that you fully consider that this law intentionally has no provision for Appraisal Management Companies to negotiate, request, or set appraisal fees and that there is no delayed implementation of this definition which to us, is effective as of the signing of the bill into law, on July 21, 2010.

HUD Mortgagee Letter 2009-28, which revised HUD'S Policy and corrected it's prior 1997 erroneous requirement that AMC & Appraiser Fees must be "co-mingled" and not exceed

C&R local fees i.e. resulting in forced "fee splitting" in clear violation RESPA, in part contained these statements:

"Any management fees charged by an AMC or other third party must be for actual services related to ordering, processing or reviewing of appraisals performed for FHA financing.

Why are Consumers & Appraisers being forced to pay the expenses of Banks, Lenders and/or their Subsidiary, Owned or Contracted Agent AMC's?

"AMC and other third party fees must not exceed what is customary and reasonable for such services provided in the market area of the property being appraised.

This is further evidence of HUD's intentional separation and distinction between actual Appraisal Fees which must be paid to an Appraiser (as defined in Title XIV) and AMC processing fees. We ask that, in the implementation of FINREG, you consider the historic HUD usage, mandates and policies in enforcing customary and reasonable appraisal fees be paid to Appraisers pursuant to the Definition in Title XIV.

Thank you for your urgent consideration and anticipated intervention in this matter of vital importance to Consumers. If requested, I am always available for further contact and look forward to meeting with you personally at your convenience.

I eagerly await your instruction on how you would like the AFI, it's members & Ethical Appraisers everywhere to respond to these matters as they are encountered on a daily basis moving forward.

Sincerely yours,
Bryan Muldoon
610-209-9226
PA State Certified Residential Real Estate Appraiser
~ AFI